Supreme Court, U.S.
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No. 98-289

In The

Supreme Court of the United States

October Term, 1998

KATHERINE M. HENDON, Administrator of the Estate of Martha Mayberry, Deceased,

Petitioner,

v.

E.I. DU PONT DE NEMOURS AND COMPANY and JAKE FULLER,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

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9 pp

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED 3

CONCLUSION 6

TABLE OF AUTHORITIES

Page

CASES

Bower v. Bower, 637 S.W.2d 456 (Tenn. 1982) 5

Matthews v. Lawrence, 703 S.W. 2d 156 (Tenn. App. 1985) 5

McMillan v. Parrott, 913 F.2d 310 (6th Cir. 1990) 4

Metropolitan Life Insurance Co. v. Marsh, 119 F.3d 415 (6th Cir. 1997) 4

Metropolitan Life Insurance Co. v. Pressley, 82 F.3d 126 (6th Cir. 1996) 3, 4

Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987) 4

Teachers Insurance & Anniuty Association v. Harris, 709 S.W. 2d 592 (Tenn. 1985) 5

Whitworth Bros. Storage Co. v. Central States SE and SW Pension Fund, 794 F.2d 221 (6th Cir.), *cert denied*, 479 U.S. 1007, 107 S.Ct. 645, 93 L.Ed.2d 701 (1986) 4

STATUTES

29 U.S.C. §§1001 *et seq.* 1

29 U.S.C. §1056(d)(3)(B) and (C) 5

29 U.S.C. §1104(a)(1)(D) 4

STATEMENT OF THE CASE

Before her death on July 17, 1994, Martha Mayberry (hereinafter, "Mayberry") was an employee of E. I. DuPont de Nemours and Company (hereinafter "DuPont"). [App. 2a-3a] As an employee of DuPont, she participated in three benefit plans governed by the Employee Retirement Income Security Act (hereinafter, "ERISA"), 29 U.S.C. §§1001 *et seq*. The three ERISA benefit plans included DuPont Group Life Insurance Plan, DuPont Savings Plan, and a TRASOP Stock Plan. [App. 21-31]. Under the ERISA Provisions, Ms. Mayberry was required to name a beneficiary who would receive the benefits under the plan in the event of her death. As a plan participant, Ms. Mayberry retained the right to freely change her beneficiary any time prior to her death. Ms. Mayberry designated her husband, Jake Fuller (hereinafter, "Fuller"), a defendant/respondent in this matter.

On June 6, 1994, Ms. Mayberry and Mr. Fuller divorced. The Marital Dissolution Agreement (hereinafter, "MDA") entered between Ms. Mayberry and Mr. Fuller and incorporated into the Final Divorce Decree made division of the marital property. Appropriately, the parties considered and treated the DuPont pension and retirement benefits, as well as the DuPont Stock and Thrift Plan and SIP plan as marital property. Ms. Mayberry was awarded all of her DuPont pension and retirement benefits, her DuPont Stock and Thrift Plan, and SIP Plan. Consequently, the agreement divested Mr. Fuller of all rights, title and interest in Ms. Mayberry's property. [App. 12a-13a]. No provision was included to identify an alternate payee in either the MDA or the Final Decree. Following the divorce Ms. Mayberry did not

remove Mr. Fuller as the designated beneficiary from the plan documents. [App. 20a].

Forty-one days following the divorce, Ms. Mayberry died intestate. The petitioner Hendon, was appointed the administratrix of the estate. [App. 20a].

The defendant DuPont, upon Ms. Mayberry's death, in accordance with the designation of beneficiary form on file, appropriately determined and distributed the plan benefits to the named beneficiary, Mr. Fuller. [App. 24a]. As a result of DuPont distributing the benefits to Mr. Fuller, the Petitioner filed a civil action against Mr. Fuller and DuPont alleging state law claims of breach of contract and conversion. [App. 18a-19a]. This civil action was removed from the Chancery Court of Hamilton County, Tennessee to the United States District Court for the Eastern District of Tennessee. [App. 19a].

Each of the defendants moved to dismiss the action. The District Court treating the motions to dismiss as motions for summary judgment granted the motions and dismissed the civil action against the respondents on August 13, 1996. [App. 26a]. The district court held that the Petitioner's cause of action was governed and preempted by ERISA and the plan documents controlled. [App. 23a-25a]. The court additionally found that the MDA did not change the beneficiary status of Mr. Fuller under the benefits plan. [App. 24a]. Petitioner appealed to the United States Court of Appeals for the Sixth Circuit.

The Sixth Circuit affirmed the decision of the lower court finding no error. [App. 29a, 40a]. The Sixth Circuit held that ERISA preempted the state law claims and

further required the plan administrator to follow the beneficiary designation according to the plan documents. [App. 40a]. Petitioner filed her Petition for Writ of Certiorari.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

The Petitioner is relying heavily on the argument there is a split of authority among the circuits as to whether the language of ERISA or federal common law provides the rule of law to determine whether the plan documents or a properly worded divorce decree should govern the disposition of the plan benefits upon the death of the plan participant. The Petitioner has distanced herself from her original argument that the affect of her state law claims on the employee benefit plans were "too tenuous, remote or peripheral" to warrant that the state law claims "relate to" the plan and thus preempted by ERISA.

The Sixth Circuit has consistently found that ERISA supplies its own rule of law and there is no need to look further than to the language of ERISA. However, the Sixth Circuit recognizes that other courts of appeals have held under federal common law a decedent's ex-spouse may waive his rights as a beneficiary of the decedent's insurance plan; if, the divorce decree specifically divested the spouse of the rights in question.

In *Metropolitan Life Insurance Co. v. Pressley*, 82 F.3d 126 (6th Cir. 1996), the Sixth Circuit acknowledged it took a different view than its sister circuits and held that

ERISA supplies the rule of law. 82 F.3d 126, 130 (6th Cir. 1996). The Sixth Circuit resolved that Congress intended ERISA plans be uniform in their interpretation and simple in their application. *McMillan v. Parrott*, 913 F.2d 310, 312 (6th Cir. 1990). Therefore, the Sixth Circuit has consistently construed ERISA according to its statutory language. See, *Metropolitan Life Insurance Co. v. Pressley*, 82 F.2d 126 (6th Cir. 1996); *Metropolitan Life Insurance Co. v. Marsh*, 119 F.3d 415 (6th Cir. 1997); *McMillan v. Parrott*, 913 F.2d 310 (6th Cir. 1990).

If the statutory language failed to provide guidance, then the court would look to the federal common law for an answer, which if not clear, may then draw guidance from analogous state law. *Id.* at 311, citing *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 45, 107 S.Ct. 1549, 1551, 95 L.Ed.2d 39 (1987); *Whitworth Bros. Storage Co. v. Central States SE and SW Pension Fund*, 794 F.2d 221, 234-235 (6th Cir.), *cert. denied*, 479 U.S. 1007, 107 S.Ct. 645, 93 L.Ed.2d 701 (1986). The Sixth Circuit does not find the need to take the analysis a step further by looking to federal common law or analogous state law.

Rather than muddy the waters, the Sixth Circuit strictly follows the language of ERISA and 29 U.S.C. §1104(a)(1)(D) requiring the "plan administrator discharge his duties in accordance with the documents and instruments governing the plan . . . " *McMillan*, at 311; *Marsh*, 119 F.3d at 420; *Pressley*, 82 F.2d at 130. Even if the Sixth Circuit were to find that language of ERISA failed to provide the answer to whether the documents within an ERISA plan controlled, or a Final Divorce Decree controlled, the designation of the beneficiary of ERISA benefits, it would have to look to federal common law.

Finding no clear answer in federal common law the court would then look to the analogous state law. Analogous state law does not support the petitioner's position.

The Supreme Court of Tennessee has had occasion to determine whether the designation of beneficiary documents control or the final divorce decree. The Tennessee Supreme court has held that the designation of beneficiary documents control. *Bower v. Bower*, 637 S.W.2d 456 (Tenn. 1982); *See also, Teachers Insurance & Annuity Association v. Harris*, 709 S.W. 2d 592 (Tenn. 1985); *Matthews v. Lawrence*, 703 S.W. 2d 156 (Tenn. App. 1985).

Respondent DuPont correctly and eloquently discusses that the decisions of the lower courts in this matter does not expand any difference of approach to this question by the court of appeals. The alleged balance among the circuits has not changed, thus the issue does not warrant resolution by this Court. This brief adopts the conclusion of the Respondent DuPont and will not belabor the issue further.

Finally, the Petitioner attempts to raise the issue that the MDA substantially complies with ERISA and thereby qualifies as a qualified domestic relations order (QDRO). First, the petitioner did not raise the issue until she petitioned for rehearing before the Sixth Circuit. The Sixth Circuit did not entertain this issue and this Court should not entertain the issue as a basis for review.

However, even if the issue had been timely raised, the MDA and Final Divorce Decree do not qualify as a QDRO. Under ERISA, 29 U.S.C. §1056(d)(3)(B) and (C), a qualified domestic relations order must create or recognize the existence of an alternate payee's right to, or

assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan. Furthermore, a QDRO is required to clearly specify the name and last known mailing address of the alternate payee to meet the requirements of ERISA. The MDA nor the Final Divorce Decree meet these requirements and does not qualify as a QDRO.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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